

IN THE MATTER OF THE NATURAL PRODUCTS
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL
BY GROVO HOLSTEINS, HIGHFIELD FARMS
and JOHN VERDONK
AGAINST THE APRIL 27, 1992, DECISION of
the BRITISH COLUMBIA MILK MARKETING BOARD

BETWEEN:

GROVO HOLSTEINS, HIGHFIELD FARMS
and JOHN VERDONK

APPELLANTS

AND:

BRITISH COLUMBIA MILK MARKETING BOARD

RESPONDENT

DECISION

Heard:

July 3, 1992

The Appellants are appealing from a decision of the British Columbia Milk Marketing Board (the "Respondent") relayed to the Appellants' counsel in a letter dated April 27, 1992, from the Respondent's counsel. Notice of the Appeal was sent to the British Columbia Marketing Board (the "Board") by way of a letter dated May 21, 1992. The appeal was heard by the Board on July 3, 1992.

There has been extensive litigation in the Courts between these Appellants (along with others) and the Respondent primarily regarding the question of whether the Appellants can legally market milk without having quota. The most recent court decision is the decision of the British Columbia Court of Appeal of July 26, 1991, known among milk industry participants as the "Bari Cheese" case. Further litigation is pending on this issue in the British Columbia Supreme Court, and is to commence in December, 1992.

Counsel for the Appellants and the Respondent agreed that the only matter which would be dealt with at the commencement of the hearing on July 3, 1992, was an application by the Respondent for a determination as to whether or not the Board has jurisdiction to hear this appeal.

On January 27, 1992, the Appellants (along with others) appeared before the Board. One aspect of the appeal which commenced on January 27, 1992, was whether or not the appellants should have their fluid quota restored. The quota had been cancelled by the Respondent on August 1, 1991. At that hearing, the Appellants and the Respondent had agreed that the only issue which would be dealt with on that date was whether the Board had jurisdiction to hear the appeal. The appeal as it related to the Board found that it had been brought out of time. Reasons for decision were given March 20, 1992.

On April 10, 1992, Appellant's counsel wrote to the Respondent's counsel and requested that the Respondent reconsider its cancellation of the Appellant's fluid quota. On April 27, 1992, Respondent's counsel stated that the Respondent declined to reconsider its previous decision to cancel fluid quota.

Simply put, the Appellants argue that the Respondent erred in refusing to reconsider its decision of August 1, 1991, cancelling the fluid quota of the Appellants. The Respondent argues that nothing has changed since August 1, 1991, which would require it to reconsider this decision.

The Appellants now appear before the Board and argue that the Respondent should reconsider its previous decision because the August 1, 1991, decision was made by the Respondent only a few days after the reasons of the Court of Appeal in the Bari Cheese case were pronounced. They argue that the Respondent did not have time to properly consider the implications of the Bari Cheese case when it made its August 1, 1991, decision. The Appellants did not present any evidence to support their allegations that the Respondent had not properly considered those reasons.

The Board is aware that the Bari Cheese decision was long-awaited by the Respondent and most of the dairy farmers of British Columbia. The Board is also aware that the decision was given close scrutiny by the Respondent and has no reason to believe that the Respondent would not have considered it carefully prior to making the August 1, 1991, decision.

The Board finds that this is a thinly disguised attempt by the Appellants to reopen a matter which had been dealt with previously. In fact, when counsel for the Appellants was asked how the relief the Appellants were seeking was different from the relief sought in the January 27, 1992, hearing before this Board, he replied:

. . . The chronology is established in the reasons (given March 20, 1992) in what happened in August and so forth. Certainly then we attempted to take the position that with the, with the (Respondent) that, and I have to concede this because this is clearly the fact, that we were arguing with the (Respondent) about the scope and implications in the Bari Cheese case. There is no question about that. That was true, true then and we certainly take the position that we were seeking to restore the quota and I have to concede in that sense we're doing so again ...

The Appellant's appeal of January 27, 1992, was dismissed because it was brought out of time. The Appellant has been unable to provide any evidence or argument to show that the nature and substance of this appeal is any different from the January 27, 1992, appeal. There was no evidence offered as to why the British Columbia Milk Marketing Board should have reconsidered its decision cancelling the fluid quota. The appellant has not presented any evidence to establish the existence of new circumstances or allegations of error of fact or law that would give rise to a request for a reconsideration.

The Board concludes that the Appellants are attempting to avoid the limitation period which blocked their appeal on January 27, 1992. The attempt fails because there are no new circumstances, facts or evidence that warrant a reconsideration by the Milk Board. To decide otherwise would render meaningless the limitation period set out in section 11 of the Natural Products Marketing (BC) Act. Any Appellant who failed to meet the limitation period could claim to reset the clock by merely asking the particular Marketing Board to "reconsider". Where there are good and sufficient reasons for reconsideration, an Appellant may legitimately request a Marketing Board to reconsider and if that request is turned down then the Appellant would have a right of appeal to this Board. However, in the present case there are no grounds for reconsideration and the Board finds that the Appellant can not revive its appeal by merely requesting the Milk Board to reconsider its decision without there being some basis to support the request for the reconsideration.

Accordingly, this appeal is dismissed and in accordance with the rules governing this appeal, the Appellants' deposit is forfeited.

Dated at Victoria, British Columbia, this 22ND day of October, 1992.



Donna M. Iverson, Chair